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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,912	05/14/2002	Michael O'Connor	42390.P3674R	1765
8791	7590	09/27/2005	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD SEVENTH FLOOR LOS ANGELES, CA 90025-1030			VORTMAN, ANATOLY	
			ART UNIT	PAPER NUMBER
			2835	

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/976,912

Applicant(s)

O'CONNOR ET AL.

Examiner

Anatoly Vortman

Art Unit

2835

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.



Anatoly Vortman
Primary Examiner
Art Unit: 2835

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding the 35 USC 112, first paragraph rejection, the arguments are not persuasive. Contrary to the Applicant's position, the clamp was not taught adequately by the disclosure of the instant application so as to enable one of ordinary skill in the relevant art to make and/or use the invention. None of the figures teaches details of the clamp structure. If Applicant believes that said clamp is an important feature of the invention (as evidenced by it's presence in the claims), then the specification and/or figures should have shown the structure of the clamp and the way it holds the heat pipe. Contrary to the Applicant's position, Fig. 5 does not show the structure of the clamp. It only schematically shows the heat pipe in dotted lines being routed through the structure of the device. The remaining figures are also bringing nothing to light regarding the details of the clamp. Specification is silent regarding the details of the clamp as well.

Further, regarding the rejection on the merits. The gist of the Applicant's arguments is that Kitahara patent at Fig. 49 does not teach a clamp. The Applicant contends that (in Kitahara): "a heat pipe is laid between a heat sink and a heat-generating element and formed in a flat fork-shape branch at the heat sink side is not equivalent to attaching heat pipe to a housing via a clamp" (see p. 15, lines 9-12 of the response). This is not persuasive. As recited in Kitahara and reiterated by the Applicant (see p. 15, lines 4-8 of the response), a fitting 56 is affixed to a heat sink 2 by fastening flanges 56c together with a fan unit 3 to heat- radiating fins 4 or specially provided support columns positioned at four corners of the heat sink 2. Thus, the forked portion of the heat pipe 55 is sandwiched between the top surface of the heat sink 2 and the pipe holding grooves 56a. The Examiner would like to direct the Applicant's attention to the fact that function of "sandwiching" in the instant case is tantamount to the function of "clamping". The member 56 clamps the heat pipe and the heat sink 2 together.

Further, The Merriam-Webster's Collegiate Dictionary, 10-th edition, defines "clamp" as following: "a device designed to bind or constrict or to press two or more parts together so as to hold them firmly". This is precisely, what member 56 of Kitahara does. It presses (i.e. clamps) the heat pipe and the heat sink 2 together in order to bind and constrict them and to hold them firmly. Thus, said member 56 and its function are perfectly in line with the Dictionary's definition of a "clamp".

Further, the Examiner would like to remind the Applicant, that the teachings of Fig. 49 have been used in the 35 USC 103(a) rejection and not in the 35 USC 102 rejection, where the exact claimed structure is required. In the 35 USC 103(a) rejection what is important is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). References and teachings are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA) 1969.

In the instant case, the general idea of using a clamping member to mount the heat pipe to the remaining structure of the device as shown on Fig. 49 of Kitahara, taken as a whole, would have definitely suggested to an artisan in the relevant art at the time the invention was made, to utilize the clamp for mounting of the heat pipe to any structure, including to the structures taught by alternative embodiments of Kitahara.

In view of the above, the outstanding rejections of the claims are believed to be proper and are maintained herein.



ANATOLY VORTMAN
PRIMARY EXAMINER